IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICITON

WRIT PETITION NO.7103 OF 2007
WITH
WRIT PETITION NO.7738 of 2007

M/s.Nicholas Piramal India Ltd. .. Petitioner

Versus

Union of India & Others .. Respondents.

Mr.V. Sridharan with Mr.Prakash Shah for the Petitioner.

Mr.K.R. Chaudhary with Mr.Y.R. Mishra & Mr.H.P. Chaturvedi for respondent Nos.1, 4 and 5 (in Writ Petition No.7103 of 2007).

Mr.P.S. Jetly with Mr.A.S. Rao & Mr.H.P. Chaturvedi for Union of India. (in Writ Petition No.7738 of 2007).

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 18TH OCTOBER, 2007.

P.C. :

1. Rule. Heard forthwith.

2. Writ Petition No.7103 of 2007 is against the interim order dated 17-07-2007, whereby the petitioners herein were directed to furnish unconditional bank guarantee for 25% of the penalty amount in their respective Appeal to the satisfaction of the respondent within 30 days from the date of the order. Aggrieved, the present

petition.

3. Writ Petition No.7738 of 2007 impugns order dated 18-09-2007 whereby the learned Tribunal recorded a finding that Appeal as preferred, considering the provisions of Section 52(2) of FERA Act was barred by limitation and a further finding that considering the first proviso to Section 52, power in the Tribunal to condone the delay is only for a further period of 45 days and not more. After having so held, the learned Tribunal also proceeded on the footing that as the petitioners herein have failed to comply with the order of pre-deposit, the appeal is also liable to be dismissed on that count.

4. We have heard learned counsel for the parties. The first issue that will have to be decided is whether the appeal as preferred is within limitation. Section 52 is the provision for limitation. The first proviso to section 52 further confers power on the Tribunal to the extent of 45 days to condone the delay. What is important is that the limitation commences from the date the order was served on the petitioner. In the instant case, the entire contention of the petitioner is that the notices were sought to be served on the petitioner at a premises which were no longer occupied or business carried on by the petitioner.

Our attention has been invited to the panchanama dated 5-8-2004 wherein notice was attempted to be served on M/s.Boehringer Mannhaim India Limited. It may be pointed out that the said company has since been amalgamated with the petitioner herein. The panchanama records as under: "that the noticee company left the premises". Pursuant to that the notice was affixed by pasting.

5. Our attention is invited to the Rules know as Adjudication Proceedings and Appeal Rules, 1974. Under these rules, relevant rule is Rule 10. Under Rule 10(a) notice has to be served by delivering or tendering the notice or order to that person or his duly authorised agent. Rule (b) then sets out by sending the notice or order to him by registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carries on, or last carried on, business or personally works, or last worked, for gain.

In the matters of procedure, the Supreme Court has declared from time to time that it is not meant to trip the cause of justice, but further the substantive process.

6. In the instant case there was material with

the respondent that the petitioners were not available at the address. Further notice of demand was served at the new address. That by itself would be an indication that there was no proper service. The case of the petitioners is that they came to know of the order for the first time when the order of attachment was served upon them.

7. In our opinion, on considering the Rule and its proper construction, limitation would commence on the date on which the Petitioners are served with a copy of the order The rule properly read, requires that the notice be served on the petitioner at their address and if it cannot be served then at the last known address. This would mean that first an attempt should be made to serve at the known address. If at that address given, the party is not found or carrying on business, then to attempt to find the new address and if not possible then to effect service by pasting. Such service can be considered to be good service by the Appellate Forum. In the instant case, there was no proper service. The appeal was preferred after the order of attachment was served. Knowledge of the order would commence from that day. Appeal was filed within limitation from that day. Consequently, it cannot be said on the facts and circumstances on record that the appeal is barred by limitation. The

order on that count has to be set aside.

7. The next issue concerns pre-deposit. If the Tribunal had come to the conclusion that the appeal was barred by limitation, there was no question thereafter of passing an order of disposing the appeal for failure to pre-deposit. An appeal beyond limitation would be no appeal in the eyes of law, although it may have been within the jurisdiction of the Tribunal to order pre-deposit.

. As we have noted that the appeal would be within limitation, the question is whether dismissal for failure to pre-deposit can be sustained. Challenge by the petitioners to the order in appeal itself is that the proceedings were exparte before the Adjudicating Authority as they had not been heard, considering that they were not served at the address. In these circumstances, it was a fit case for the Tribunal to exercise its jurisdiction for waiver of pre-deposit. Considering the above, in our opinion, the order of pre-deposit is liable to be set aside.

8. The next question before us is whether we should remit the matter back to the Tribunal or send the matter back to the Adjudicating Authority for

giving an opportunity to the petitioners to enable them to place the material and thereafter pass an appropriate order in accordance with law. In our opinion, considering the finding recorded, ends of justice would be met if the impugned orders of the Tribunal and Adjudicating Authority are quashed and set aside and the matter is remanded back to the Adjudicating Authority for deciding the matter denovo. The Petitioners to appear before the Authority on 25-10-2007 at 11.00 a.m. The Adjudicating Authority thereafter to give opportunity to the petitioners and dispose of the matter in accordance with law.

9. Rule is made absolute in terms of prayer clause A-1 in Writ Petition No.7738 of 2007. Insofar as other reliefs, it will be open to the petitioners to raise the same in other appropriate proceedings.

10. Similarly, Rule is made absolute in terms of prayer clause A-1 in Writ Petition No.7103 of 2007.

There shall, however, be no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)